IN THE TENTH JUDICIAL CIRCUIT COURT
IN AND FOR HARDEE, HIGHLANDS
AND POLK COUNTY, FLORIDA

Case No.: 2004CC-001800-WH
Appeal No.: 2005-AP-00001

NEOMIA WHITE,

Appellant,

vs.

PROGRESSIVE CONSUMERS
INSURANCE CO., a foreign corporation,

Appellee.

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OPINION OF THE COURT

This is an appeal from the county court of Polk County, Judge Steven L. Selph presiding. The Appellant, Neomia White brought an action against her insurance carrier, Progressive, the Appellee. This court has jurisdiction. Fla. R. App. P.9.030. The ruling of the county court is affirmed.

I.

On April 20, 2004, Appellant/Plaintiff filed a complaint against Appellee/Defendant, alleging that Appellee failed to pay Personal Injury Protection (PIP) benefits for medical bills incurred by Appellant as a result of a motor vehicle accident on November 21, 1999. Appellant received medical treatment from numerous facilities for injuries sustained in the accident. Only one of her medical providers billed PIP, and PIP paid this bill. Her other medical providers billed her health insurance. Medicare and Appellant's health insurance then put liens on her bodily injury settlement. Appellant also personally received a bill from another medical provider. Upon Appellant's request, Appellee would not pay the bill or the liens, so Appellant paid both. Appellant sought reimbursement, and Appellee refused to pay. The above suit ensued. It should be noted that Appellant's bodily injury settlement included her past medical expenses.

It is undisputed that the bills were not filed in compliance with *Florida Statutes* §627.736. Appellee filed and won a Motion for Summary Judgment denying the payment and reimbursement of personal injury protection benefits to Appellant. The trial court held that all statements and bills must be submitted to the PIP carrier in compliance with the PIP statute, and if they are not, there is not a PIP benefit overdue and an insured does not have a cause of action under Florida's PIP statute.

II.

The first issue is whether the Appellee has to reimburse the Appellant for the medical bill the Appellant personally paid. Appellant argues that the statute is silent as to what is required of the injured party in order to recover under the statute. Appellant further contends that the statute only speaks of providers. *Florida Statute* §627.736 (5)(b) states an insurer or insured is not required to pay a claim or charges with respect to a bill or statement that does not substantially meet the applicable requirements of paragraph (d). §627.736 (5)(b), Fla. Stat. Section 5(d) states that "*all* statements and bills for medical services rendered by any physician, hospital, clinic or other person or institution *shall* be submitted to the insurer on a properly completed [form](emphasis added)" §627.736 (5)(b), Fla. Stat. Section (5)(d) goes on to say that the insurer is not considered to be furnished with notice of the covered loss or medical bills due unless the statements or bills comply with Section (5)(d). Id.

Therefore, because the Appellant did not comply with Section (5)(d), the Appellee was not on notice of the covered loss or medical bills due. Further, based on the noncompliance with 5(d), there is not a PIP benefit overdue and an insured does not have a cause of action under Florida's PIP statute.

III.

The second issue is whether the Appellee has to reimburse the Appellant for the amount of her Medicare lien. Appellant argues that 42 U.S.C. 1395 preempts *Florida Statute* §627.736, and therefore Medicare should have been reimbursed by PIP, and consequently, the Appellant should be reimbursed for satisfying the Medicare lien. 42 U.S.C. §1395 gives Medicare the ability to seek reimbursement from the PIP insurer, not the Appellant; therefore 42 U.S.C. §1395 is not applicable to this case.

Thus, as stated above, because the bills or statements did not comply with Section 5(d), the insurer did not have notice of the covered loss or medical bills due. Therefore, no PIP benefits were overdue, and the Appellant does not have a cause of action under Florida's PIP statute.

IV.

The third issue is whether the Appellee has to reimburse the Appellant for the amount of the health insurance lien. Appellant argues that the statute does not say a health care provider has to bill PIP, and therefore the statute should not apply in such a situation. Once again, the statute clearly says to recover from PIP, a medical provider must comply with the statute. This was not the case here. Therefore, no PIP benefits were overdue, and the Appellant does not have a cause of action under Florida's PIP statute.

V.

Furthermore, the Appellant previously received a jury award that included her past medical expenses. Her health insurance was reimbursed from this award. If the Appellant were allowed to recover money from her PIP for the amounts reimbursed to her other insurers, Appellee would be receiving reimbursement for amounts she did not pay. In reference to damages in tort claims, *Florida Statute* §627.736(3) says and injured party "shall have no right to

recover any damages for which personal injury protection benefits are paid or payable." §627.736 (3), Fla. Stat. This statute prevents a windfall, which is what the Appellant would be doing if she were awarded these benefits. The Appellant was made whole by the bodily injury settlement, there is no reason to allow a windfall by awarding her PIP benefits.

Accordingly, it is ORDERED and ADJUDGED that the ruling of the county court is AFFIRMED as to all three issues.

DONE and ORDERED August 1, 2005.

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RONALD HERRING, Chief Judge